

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 18 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ERVIN CELOALIAJ,

Petitioner - Appellant,

v.

D. L. RUNNELS, Warden,

Respondent - Appellee.

No. 05-55585

D.C. No. CV-03-00139-SVW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted September 13, 2006**
Pasadena, California

Before: HALL, McKEOWN, and WARDLAW, Circuit Judges.

Ervin Celoaliaj brings this habeas appeal pursuant to 28 U.S.C. § 2254,
claiming that the district court erred in denying his claims of juror misconduct and

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** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

suppression of evidence under Brady v. Maryland, 373 U.S. 83 (1963). We affirm the district court's denial of the habeas petition.

The state trial court held an evidentiary hearing and canvassed the jurors regarding the juror misconduct claims. After considering all the evidence, the state court found that there was no outside influence on the jury. This determination by the trial court was not unreasonable under § 2254. See Smith v. Phillips, 455 U.S. 209, 218 (1982) (“[T]his case is a federal habeas action in which [state court] findings are presumptively correct under 28 U.S.C. § 2254(d). . . . [F]ederal courts in such proceedings must not disturb the findings of state courts unless the federal habeas court articulates some basis for disarming such findings of the statutory presumption that they are correct and may be overcome only by convincing evidence.”).

Also, in the circumstances of this case, the trial court's efforts in investigating the claims of juror bias met the constitutional standard of due process: “It seems to us to follow ‘as the night the day’ that if in the federal system a post-trial hearing such as that conducted here is sufficient to decide allegations of juror partiality, the Due Process Clause of the Fourteenth Amendment cannot possibly require more of a state court system.” Id. at 213 & 218 (due process was satisfied by a state court hearing where one juror and the prosecuting attorneys

testified regarding an employment application submitted by the juror to the district attorney).

Finally, as to the Brady claim, the district court's finding that the alleged Brady material was turned over to the defense was not clearly erroneous. See Fed. Rule Civ. Proc. 52(a); Bonin v. Calderon, 59 F.3d 815, 823 (9th Cir. 1995) (“findings of fact made by the district court relevant to the denial of his habeas corpus petitions are reviewed for clear error”). This finding, made after an evidentiary hearing, is corroborated by the trial record, where a defense attorney appears to acknowledge receipt of the Brady material. Accordingly, the district court properly denied the Brady claim, as nothing was suppressed. Brady, 373 U.S. at 87 (prohibiting “suppression by the prosecution of evidence favorable to the accused”).

AFFIRMED.